

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

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| In the Matter of                                | ) |                        |
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| KaSTAR 73 Acquisition, L.L.C,                   | ) | File Nos.              |
| and KaSTAR 109.2 Acquisition, L.L.C.,           | ) | SAT-T/C-19990629-00071 |
| Applications for Consent to Transfer of Control | ) | SAT-T/C-19990629-00072 |
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**MEMORANDUM OPINION AND ORDER**

**Adopted: May 28, 2002**

**Released: May 29 2002**

By the Chief, International Bureau:

1. Before the International Bureau is a petition for reconsideration filed by Pegasus Development Corporation ("Pegasus"). Pegasus seeks reconsideration of a December 17, 1999 Order by the International Bureau in the above referenced proceeding.<sup>1</sup> KaSTAR Satellite Communications Corp. ("KaSTAR")<sup>2</sup> and DirectCom Networks, Inc. ("DirectCom") filed oppositions to the petition. For the reasons set forth below we deny Pegasus' petition for reconsideration.

2. In June 1999, KaSTAR 73 and KaSTAR 109.2, subsidiaries of KaSTAR, applied for authority to transfer control of their licenses from Televerde Communications Corporation to its shareholders and certain investors. Pegasus, at that time, an applicant in the second Ka-band processing round, filed a petition to deny or defer KaSTAR's applications. Pegasus asserted that KaSTAR had failed to provide enough information to determine whether the transaction complies with the Commission's anti-trafficking rules.<sup>3</sup> Pegasus claimed that the principals of KaSTAR's majority shareholder, Televerde, realized a substantial gain in connection with the transfer of control. According to Pegasus, the Bureau was required to request additional information from KaSTAR documenting the underlying transactions.<sup>4</sup>

<sup>1</sup> KaSTAR 73 Acquisition, LLC and KaSTAR 109.2 Acquisition, LLC, Applications for Consent to Transfer of Control, *Memorandum Opinion and Order*, DA 99-2816, 15 FCC Rcd 1615 (Int'l Bur. 1999) ("*KaSTAR Order*").

<sup>2</sup> In a series of name changes and *pro forma* transfers of control and assignments, KaStar became iSky, which in turn became WildBlue Communications, Inc. See Letter from William M. Wiltshire, Counsel, WB Holdings, to Magalie Roman Salas, Secretary, Federal Communications Commission (November 3, 2000). See also Letter from William M. Wiltshire, Counsel, WB Holdings, to Magalie Roman Salas, Secretary, Federal Communications Commission (January 8, 2001) requesting *pro forma* assignment of the license held by KaStar 73 Acquisition LLC to KaStar 109.2 and to change the name of the surviving entity to WB Holdings 1 LLC. For purposes of this Order we continue to refer to the company by its original name.

<sup>3</sup> Petition to Deny or Defer of Pegasus Development Corp., filed Aug. 23, 1999, at 4 ("*Pegasus Petition to Deny*").

<sup>4</sup> Letter from Bruce Jacobs, Counsel for Pegasus to Magalie Roman Salas dated November 29, 1999.

In addition, Pegasus stated that KaSTAR's licenses should be attributed to DirectCom, a second round applicant, because DirectCom would have a 19.10 percent interest in KaSTAR after the transfer of control.<sup>5</sup>

3. On December 17, 1999, the International Bureau granted KaSTAR authority to transfer control. We found that the transactions did not constitute trafficking, but would improve KaSTAR's chances of becoming a robust competitor in the satellite communications market.<sup>6</sup> In support of this conclusion, we noted among other things, that the proceeds of the transactions would provide funds for the acquisition and launch of a satellite, that KaSTAR's original shareholders would continue to hold the largest percentage of stock and David Drucker, a principal of Televerde, would continue to serve as chairman. The grant was conditioned on the requirement that KaSTAR notify the Commission of any further transactions involving the sale of KaSTAR stock from Televerde or its principals prior to launch of its first satellite and within 30 days of the transaction.<sup>7</sup> In addition, the Bureau stated that the issue regarding attributable interests had been fully briefed in the second Ka-band processing round and noted that the outcome may affect more than one applicant.<sup>8</sup> Therefore the transfer of control proceeding was not the proper forum to address Pegasus' claim.<sup>9</sup>

4. Pegasus' petition for reconsideration asserts that the Bureau did not have enough information regarding the transactions at issue to grant the applications, and that it was required to obtain additional information regarding the underlying transactions. KaSTAR and DirectCom oppose the petition on the grounds that it merely restates arguments already decided by the Bureau. We agree.

5. Pegasus' petition raises no new facts or arguments that we did not consider and address when we granted the underlying applications. As we explained previously, the record provided sufficient information for the Bureau to conclude that the transfer applications would facilitate the rapid deployment and competition of a new satellite service.<sup>10</sup> We further note that our rules do not *require* the type of accounting Pegasus suggests. Rather the Commission may, in its discretion, request additional information demonstrating that no trafficking has occurred.<sup>11</sup> In any event, as noted in the *KaSTAR Order*, the Bureau did in fact request additional information, which supported our conclusion that no trafficking was involved. Instead, we recognized that the construction and launch of a new satellite system required enormous capital and the proposed transaction served a legitimate business purpose of securing the financing necessary to implement KaSTAR's Ka-band system. We reiterate that the anti-

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<sup>5</sup> *Pegasus Petition to Deny* at 6.

<sup>6</sup> *KaSTAR Order*, 15 FCC Rcd at 1620.

<sup>7</sup> *Id.*

<sup>8</sup> In the second Ka-band processing round the Bureau concluded that it was unnecessary to undertake a detailed investigation into the ownership structure of the second round applicants because the orbital location assignment plan accommodated all of the proposed satellites and left additional orbit locations available for future entry. *See* Second Round Assignment of Geostationary Satellite Orbit Locations to Fixed Satellite Service Space Stations in the Ka-band, *Order*, DA 01-1693, 16 FCC Rcd 14389, 14396 (Int'l Bur. 2001).

<sup>9</sup> *KaSTAR Order*, 15 FCC Rcd at 1620.

<sup>10</sup> *Id.*

<sup>11</sup> 47 C.F.R. § 25.145(d) (2001).

trafficking rules were designed to discourage speculators and prevent unjust enrichment of those who do not implement their systems, not to prevent capital investments. Consequently, we affirm the initial decision for the reasons stated therein.

6. Accordingly, the petition for reconsideration filed by Pegasus Development Corporation on January 31, 2000 is DENIED.

7. This Order is issued pursuant to Section 0.261 of the Commission's rules on delegated authority, 47 C.F.R. § 0.261, and is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

Donald Abelson  
Chief, International Bureau